

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

360 DEGREE EDUCATION, LLC,
d/b/a Cortiva Institute; and THE COALITION
FOR CAREER SCHOOLS,

Plaintiffs,

v.

DEPARTMENT OF EDUCATION; and
SECRETARY MIGUEL A. CARDONA, in his
official capacity as Secretary of the Department
of Education,

Defendants.

Case No. 4:24-cv-00508-P

**Plaintiffs' Motion for Order to Show
Cause, or in the Alternative, for a
Further Preliminary Injunction**

Plaintiffs 360 Degree Education, LLC, d/b/a Cortiva Institute and the Coalition for Career Schools respectfully move this Court for an order requiring the Defendants U.S. Department of Education (“Department”) and U.S. Secretary of Education to show cause why they should not be held in civil contempt or, in the alternative, for an order under Rule 65 of the Federal Rules of Civil Procedure granting a further preliminary injunction, without bond, enjoining the Department from taking any action to deprive Cortiva of Title IV eligibility for student aid without first affirmatively seeking leave of court.

This Motion is made on the grounds specified in this Motion, the accompanying Memorandum, the exhibits in the appendix attached to this Motion and accompanying Memorandum, all matters of which this Court may take judicial notice, and on such other and further oral or documentary evidence as may be presented to the Court at or before a hearing on this Motion.

As further explained in the attached Memorandum, Plaintiffs have a strong likelihood of succeeding on their claims, aside from violating the preliminary injunction that the Court already entered:

- (1) Contrary to the Department's assertion here, the state-authorization requirement in Title IV of the Higher Education Act does not mean that a state administrative agency must approve each hour of a particular program, and Cortiva readily meets the statutory standard as an institution "legally authorized within [Texas] to provide a program of education beyond secondary education," 20 U.S.C. § 1001(a)(2);
- (2) If the Department really wanted to enforce its novel interpretation, it would need to go through negotiated rulemaking;
- (3) The Department's stated decision to apply this interpretation to Cortiva and other massage programs in Texas, but not to other schools, is quintessentially arbitrary and capricious; and
- (4) The Department's new retaliatory action against Cortiva, in response to its filing of this regulatory litigation, violates Cortiva's rights under the First Amendment to the United States Constitution.

Plaintiffs also meet the other elements for issuing a preliminary injunction. Among other harm, they will suffer irreparable harm by losing *all* access to federal financial student aid and to benefits offered to students such as Pell Grants. And the balance of the equities and public interest factors—which merge when the United States is a party—favor preserving the status quo because that will cause less harm to the government than implementation of the Rule would cause to the Plaintiffs.

For these reasons and those explained in the attached Memorandum, Plaintiffs respectfully request that this Court should promptly enter an order for the Defendants to show cause why they should not be held in civil contempt. In the alternative, the Court should further enjoin the Department from taking *any* action to deprive Cortiva of Title IV eligibility for student aid without first affirmatively seeking leave of court.

Dated: August 1, 2024

Respectfully submitted,

/s/ Farnaz Farkish Thompson

Melissa Hensley (Texas Bar No. 00792578)

Cory R. Ford (Texas Bar No. 24121098)

Michael C. Elliott (Texas Bar No. 24086913)

MCGUIREWOODS LLP

2601 Olive Street, Suite 2100

Dallas, TX 75201

Telephone: (469) 372-3926

Facsimile: (214) 273-7475

mhensley@mcguirewoods.com

cford@mcguirewoods.com

melliott@mcguirewoods.com

Farnaz Farkish Thompson (D.C. Bar No. 1659285) (*pro hac vice*)

John S. Moran (D.C. Bar No. 1014598) (*pro hac vice*)

Jonathan Helwink (D.C. Bar No. 1754411) (*pro hac vice*)

Stephen Tagert (Virginia Bar No. 99641) (*pro hac vice*)

MCGUIREWOODS LLP

888 16th Street NW, Suite 500

Washington, DC 20006

Telephone: (202) 828-2817

Facsimile: (202) 828-3327

fthompson@mcguirewoods.com

jmoran@mcguirewoods.com

jhelwink@mcguirewoods.com

stagert@mcguirewoods.com

CERTIFICATE OF CONFERENCE

Through an in-person meeting on July 31, 2024, and also by emails exchanged on July 29, 31, and on August 1, 2024, Plaintiffs' counsel conferred with Kathryn L. Wyer, Senior Trial Counsel at the U.S. Department of Justice, Civil Division, Federal Programs Branch; informed her of this Motion to Show Cause or in the Alternative for a further Preliminary Injunction; and requested the position of the Defendants. Defendants oppose this Motion and state in their August 1, 2024, email as follows:

Defendants have provided written assurances that the Department will abstain from initiating an enforcement action against Cortiva at least until after the Court rules on Defendants' Motion to Dismiss. Defendants' Motion argues that, given TDLR's unequivocal position that it will not authorize massage programs above or below 500 hours, Plaintiffs cannot meet their burden to show that Cortiva's massage program is otherwise eligible for Title IV and thus that its claimed injury from the entirely separate provision at issue in this case is certainly impending or likely to be redressed by a favorable decision. However, Defendants' Motion recognizes that "[a]ny action that the Department takes" to enforce its view of Cortiva's current eligibility "will be governed by existing law" (fn.3), which would allow Cortiva to fully raise any defenses in the administrative process. Defendants' Motion imposes no irreparable harm on Cortiva, and it would be an inappropriate waste of judicial resources to initiate separate emergency proceedings based solely on Defendants' legal argument.

/s/ Farnaz Farkish Thompson

Melissa Hensley (Texas Bar No. 00792578)
Cory R. Ford (Texas Bar No. 24121098)
Michael C. Elliott (Texas Bar No. 24086913)
MCGUIREWOODS LLP
2601 Olive Street, Suite 2100
Dallas, TX 75201
Telephone: (469) 372-3926
Facsimile: (214) 273-7475
mhensley@mcguirewoods.com
cford@mcguirewoods.com
melliott@mcguirewoods.com

Farnaz Farkish Thompson (D.C. Bar No. 1659285) (*pro hac vice*)

John S. Moran (D.C. Bar No. 1014598) (*pro hac vice*)

Jonathan Helwink (D.C. Bar No. 1754411) (*pro hac vice*)

Stephen Tagert (Virginia Bar No. 99641) (*pro hac vice*)

MCGUIREWOODS LLP

888 16th Street NW, Suite 500

Washington, DC 20006

Telephone: (202) 828-2817

Facsimile: (202) 828-3327

fthompson@mcguirewoods.com

jmoran@mcguirewoods.com

jhelwink@mcguirewoods.com

stagert@mcguirewoods.com

CERTIFICATE OF SERVICE

I hereby certify that on August 1, 2024, I caused the foregoing to be filed with the Clerk of the U.S. District Court for the Northern District of Texas using the Court's CM/ECF system, which will electronically serve copies of the same on counsel for all parties.

/s/ Farnaz Farkish Thompson

Farnaz Farkish Thompson